

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-309

May 27, 1998

MARY-ANN MACMASTER, ET AL v.  
GARDINER WATER DISTRICT  
Complaint Requesting Commission  
Investigation of the Sale of  
the New Mills Dam

ORDER INITIATING  
INVESTIGATION

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WELCH, Chairman; NUGENT and HUNT, Commissioners

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On April 15, 1998, the Commission received a complaint against the Gardiner Water District signed by Mary-Ann MacMaster and 17 other persons (Complainants). For the reasons set forth below, the Commission will open an investigation into the issues raised by the Complainants.

#### **I. BACKGROUND**

The complaint, filed pursuant to 35-A M.R.S.A. § 1302, requests that the Commission investigate several issues regarding the proposed sale of the New Mills Dam, currently owned by the District. The facts alleged by the Complainants are as follows. On or about October 6, 1997, the District filed a petition with the Maine Department of Environmental Protection (DEP) pursuant to 38 M.R.S.A. § 901 et seq. to abandon the New Mills Dam. In response, the municipal officials of the municipalities bordering the water held back by the Dam<sup>1</sup> initiated efforts to form an interlocal agreement to assume joint ownership of the Dam. It soon became evident that the municipalities did not have enough time to finish work on the interlocal agreement and obtain voter approval before the expiration of the time period within which the DEP would decide the Water District's petition to abandon the Dam. At this time, local legislators pursued the enactment of legislation that would permit the time period to be extended by 180 days to provide sufficient time to the municipalities to finish the interlocal agreements.

The Gardiner Water District trustees held a meeting on Sunday, March 29, 1998, at which only two of the District's three trustees were present (including Mr. Pulis, whose term was to expire soon thereafter). At this meeting, the trustees voted to sell the Dam to Councilor Trask.

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<sup>1</sup>The New Mills Dam is located on the Cobbossee Stream in Gardiner. The four municipalities that would be affected by the Dam's breach are Gardiner, West Gardiner, Litchfield and Richmond (the four municipalities).

In particular, the Complainants asked the Commission to investigate the following issues:

1. Was the Gardiner Water District under any obligation to notify the public of the March 29th trustee meeting and vote?
2. Was the March 29th vote illegal?
3. Can these circumstances be considered an "unreasonable act" by the Gardiner Water District?
4. Did the Gardiner Water District have any obligation to wait until April 6, 1998 (the date specified in a letter sent to the four municipalities) before agreeing to transfer ownership of the Dam to anyone other than the four municipalities?
5. Is the Gardiner Water District under any obligation to give the four municipalities first refusal on the Dam?
6. Can the agreement between the Gardiner Water District and Councilor Trask be investigated to ensure that it is in the best interest of the public?

As required by statute, the Gardiner Water District responded to the Complainants' allegations on April 28, 1998. The District noted that Cobbossee Stream served as the District's water source until 1980, when it was completely replaced by two groundwater wells.<sup>2</sup> The District obtained ownership of the New Mills Dam from the City of Gardiner in 1974. In 1982, the District constructed a hydroelectric facility at the Dam and entered into a power purchase agreement with Central Maine Power Company pursuant to the Public Utilities Regulatory Policy Act. Operation of the hydroelectric facilities ceased in 1994 when CMP bought out the agreement.

The District asserts that, since 1994, the sole purpose of the Dam has been to maintain the water levels established by the Cobbossee Watershed District for the benefit of upstream users of Cobbossee Stream and Pleasant Pond. Despite gaining no benefit from the Dam, the District's maintenance costs for the Dam have run as much as \$35,166 per year (excluding hydro-related costs).<sup>3</sup> According to the District, this continued expense to

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<sup>2</sup>The District's backup supply is provided through a connection with the Hallowell Water District. In addition, the District maintains seven storage tanks capable of holding a 5-day supply of water.

<sup>3</sup>The District's legislative testimony (Exhibit 20 to the District's Response) indicates that no maintenance is expected to

ratepayers was the genesis of the District's desire to cease ownership of the Dam. This desire was reinforced by a dispute over the flow levels of Cobbossee Stream during the summer of 1997.

Therefore, the District initiated the process of dam abandonment prescribed by state law. On October 2, 1997, the District filed its petition with the DEP. This petition triggered a statutorily-prescribed 180-day period, expiring on March 31, 1998. The District asserts that it hoped that some party would surface during the dam abandonment process who would be willing to assume ownership of the Dam. By October 15, 1997, the District first became aware that the four municipalities were considering the formation of an interlocal agreement to acquire the Dam. However, the municipalities apparently failed to meet the time deadlines prescribed by the dam abandonment law. In January 1998, the four municipalities asked the District to withdraw its petition with the DEP to permit additional time for the creation of the necessary interlocal agreement. By letter dated February 2, 1998, the District declined to do so out of concern over the continued operation and maintenance expenses associated with the Dam. Legislation was then introduced to permit affected municipalities to obtain a 180-day extension of the time period. Although the legislation was enacted, the four municipalities never exercised their right to obtain an extension.

With the time period under the dam abandonment law rapidly closing, on March 27, 1998, the District received an offer from George Trask to acquire the Dam. The District immediately called an emergency trustees meeting for Sunday, March 29, 1998. Both trustees present voted to accept Mr. Trask's offer.<sup>4</sup> Because a new owner had been found, the District's DEP petition was withdrawn on March 31, 1998.

Based upon its recitation of the facts described above, the Gardiner Water District argues that its actions leading to the agreement to transfer the New Mills Dam to George Trask were reasonable and in compliance with all applicable laws.

## II. DISCUSSION

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be necessary in the short term and the Dam's annual operating costs would, therefore, "typically" be \$8,826 per year.

<sup>4</sup>The vote was subsequently ratified by the full Board of Trustees on April 15, 1998.

35-A M.R.S.A. § 1302 establishes the right of utility customers to petition the Commission to investigate allegations of unreasonable utility rates or practices. Pursuant to the statute, the Commission must conduct an initial summary investigation to determine whether the complaint lacks merit. We cannot find that a complaint lacks merit unless we can find that the Commission has no authority to grant the relief requested or that the challenged rates or practices are not in any manner unjust or unreasonable. *Agro v. Public Utilities Commission*, 611 A.2d 566 (Me. 1992).

We cannot find that the issues raised by the Complainants lack merit under the *Agro* standard. Although much of the District's explanation sheds considerable light upon the issues raised by the Complainants' allegations, the determination of whether the District's actions were "reasonable" within the meaning of section 1302 will require additional investigation to verify the accuracy of the District's statements.

In addition, we believe that the potential applicability of 35-A M.R.S.A. § 1101 (disposition of property necessary or useful in performance of utility duties) and 35-A M.R.S.A. § 6109 and Chapter 691 of the Commission's Rules (sale of water resource land) should be investigated in greater detail. The District has argued that it obtains no benefits from ownership of the Dam and that the Dam is, therefore, not necessary or useful to its operations. However, on this record we cannot rule out the possible utility of Cobbossee Stream as a back up water supply for the District, which might make the Dam useful to the District. Similarly, the District provided a copy of a survey indicating that the footprint of the Dam and the area of the access easements to be transferred with the Dam were less than 5 acres, thereby indicating that section 6109 and Chapter 691 would not apply to this transfer.<sup>5</sup> We find it difficult to understand, however, how Mr. Trask can operate the Dam without the transfer of water rights associated with the Dam's use; if any such flowage easements were included within the transfer, it may increase the relevant land area to beyond the 5-acre threshold. Second, Mr. Trask has indicated to the Commission that he is also interested in acquiring the District's hydroelectric facilities associated with the Dam. We have no evidence as to whether such an additional transfer (if it were to occur), when combined with the Dam and associated easements, might trigger application of Chapter 691. If Chapter 691 were found to apply, it would trigger certain procedural requirements and grant abutting municipalities the right of first refusal.

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<sup>5</sup>Chapter 691, section (1)(E) of the Commission's Rules, which implements 35-A M.R.S.A. § 6109, limits application of the water resource land transfer provisions to parcels exceeding 5 contiguous acres.

Additional support will be necessary to rule out the potential application of the provisions cited above.

Finally, the District's Response and legislative testimony (Exhibit 20 to the District's Response) indicate that the District spent \$35,000 on repairs to the Dam in one recent year, and spent over \$687,000 on the Dam in the past 15 years. These figures raise some question as to whether the Dam has any substantial fair market value for which the District's ratepayers should receive adequate compensation. Although not specifically raised by the Complainants, this issue also deserves closer investigation.

Accordingly, we

O R D E R

1. That a formal investigation be opened into the reasonableness of the Gardiner Water District's actions in seeking to transfer ownership of the New Mills Dam;

2. That the Administrative Director shall send a copy of this Order to the lead petitioner, Mary-Ann MacMaster, and to the municipal officers of the municipalities of Gardiner, West Gardiner, Litchfield and Richmond; and

3. That all Petitions for Intervention in this docket must be filed with the Administrative Director of the Public Utilities Commission, at 242 State Street, State House Station # 18, Augusta, ME 04333, by June 12, 1998.

Dated at Augusta, Maine this 27th day of May, 1998.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent

COMMISSIONER ABSENT: Hunt  
NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.